

S-20897A-13-0391 PROCEDURAL CONF



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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF:

KENT MAERKI and NORMA JEAN
COFFIN aka NORMA JEAN MAERKI,
aka NORMA JEAN MAULE, husband
and wife,

DENTAL SUPPORT PLUS FRANCHISE,
LLC, an Arizona limited
liability company,

Respondents.

DOCKET NO.
S-20897A-13-0391

PROCEDURAL
CONFERENCE

AZ CORP COMMISSION
DOCKET CONTROL

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1 BE IT REMEMBERED that the above-entitled
2 and numbered matter came on regularly to be heard before
3 the Arizona Corporation Commission, 1200 West Washington
4 Street, Room 2, Phoenix, Arizona, commencing at 10:03
5 a.m. on the 13th day of November, 2014.

6

7 BEFORE: MARC STERN, Administrative Law Judge

8

9 APPEARANCES:

10 For the Respondents:

11 CHESTER & SHEIN, P.C.
12 Mr. Ryan Houser
13 8777 North Gainey Center Drive, Suite 191
14 Scottsdale, Arizona 85258

15 For the Arizona Corporation Commission Securities Division:

16 Ms. Wendy L. Coy
17 Staff Attorney, Securities Division
18 1300 West Washington Street
19 Phoenix, Arizona 85007

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LILIA MONARREZ, RPR
Certified Reporter
Certificate No. 50699

1 ALJ STERN: All right. We'll go on the record
2 in the matter of Kent Maerki, et al., in Docket Number
3 S-20897A-13-0391. My name is Marc Stern. I'll preside
4 today.

5 And present for the Division?

6 MS. COY: Wendy Coy.

7 ALJ STERN: And present for the respondent?

8 MR. HOUSER: Ryan Houser, and I believe Marie
9 Mirch is going to be appearing by telephone.

10 ALJ STERN: I don't believe she is because we
11 haven't made arrangements for a line to call in on.

12 MR. HOUSER: Okay.

13 ALJ STERN: And this is news to me. No one has
14 contacted the office. That's the usual procedure. So I
15 don't know. We can take a brief recess and I'll be sure
16 and check, but as of yesterday, maybe even this
17 morning -- I can't recall -- I said, have you ever heard
18 anything from Ms. Mirch on this proceeding? And they
19 said no. So -- and she's an important party.

20 Has the Division received the materials to check
21 on the medical condition of Mr. Maerki?

22 MS. COY: Yes, sir, we have.

23 ALJ STERN: Okay. Mr. Houser, how -- was your
24 firm in communication with this individual, Ms. Mirch,
25 the counsel from California?

1 MR. HOUSER: Yes. And it was my understanding
2 that she would be appearing by telephone and she also is
3 the counsel that's been responsible for communicating
4 with all the doctors regarding this matter.

5 I do request a five-minute recess so I can try
6 to reach her and find out why -- you know, what -- where
7 we are.

8 ALJ STERN: Okay. Has the Division received
9 what they need that we said to turn over to you the last
10 time?

11 MS. COY: Yeah. We received it a couple of
12 weeks ago, and we've had the opportunity to obtain some
13 information from the doctors and actually speak with a
14 couple of them. One we weren't able to get ahold of,
15 but we've spoken -- spoken to both and I've received
16 some reports.

17 ALJ STERN: All right. Well, let's see what the
18 situation is with your co-counsel. We'll take five
19 minutes. I'll check with my office again on this
20 matter. I don't think we can get an instantaneous link
21 that will make her available. I don't know. I'll have
22 to check. So you can try and reach her. Maybe she's
23 not even available.

24 All right. We'll go off the record for a few
25 minutes.

1 MR. HOUSER: Thank you.

2 MS. COY: Thank you.

3 (Whereupon, a recess was taken in the
4 proceedings.)

5 ALJ STERN: Okay. We're back on the record and
6 at this time, after a brief recess, and -- where do we
7 stand, Mr. Houser?

8 MR. HOUSER: At this point, I'd make a motion
9 for Ms. Mirch to appear telephonically. She is
10 available right now if the --

11 ALJ STERN: Well, the problem is, see, we set
12 these up ahead of time, and our main line is in use
13 today because there's an open meeting that's come about.
14 And I believe the last time someone -- whether it was
15 your office or when she wanted to appear telephonically,
16 had filed a motion to appear telephonically, and that's
17 how we went about setting it up. Yeah, let's see. The
18 Eighth Procedural Order. Somewhere, somehow we got a
19 request, I think, that the matter be scheduled
20 telephonically and so we gave everybody a number to call
21 in on or someone requested it.

22 In any event, at this point I'll deny your
23 motion, I mean, for today's proceeding certainly.

24 What's the Division's position at this point,
25 Ms. Coy?

1 MS. COY: On the issue with calling in or where
2 we are on this case?

3 ALJ STERN: Where we are on the case. I know
4 the Division wants to go forward. The respondent wants
5 to contest the allegations. We had a problem with
6 Mr. Maerki's physical condition several months ago and
7 we granted a continuance at that time because of his
8 recent stroke and decided to set this as a procedural
9 conference to look into when we could schedule it for a
10 hearing, but I don't know anything about the
11 respondent's --

12 MS. COY: Okay.

13 ALJ STERN: -- Mr. Maerki's physical condition.
14 I see nothing in writing that has been filed by counsel
15 for the respondent, that is for sure, and I don't know
16 what the Division has been able to assess in the interim
17 period. I know you indicated previously that you got
18 some medical information, I believe, from the
19 respondents --

20 MS. COY: Yes.

21 ALJ STERN: -- or authorizations or something.

22 MS. COY: That's correct, Your Honor. At this
23 point the Division wants to move forward and set a
24 hearing presumably as soon as possible. We've spoken to
25 Scottsdale Neurology, received a release, and we spoke

1 with Dr. Wolfson a couple of times. And, you know, I'll
2 disclaim I'm not a doctor, but we've been -- we received
3 the neuropsychology consultation report. The date of
4 the report is October 14 and, you know, looking at this
5 document in my non-medical profession, it indicates
6 everything is within normal limits.

7 They compared the test to an October 2012 test
8 and, at least according to the neuropsychologist, he was
9 improved over the 2012 test. And it indicates that all
10 his scores fell within normal limits compared to the
11 normative population. In talking to the Scottsdale
12 neurologist and -- or his office and speaking with
13 Dr. Wolfson, they concur it was a minor stroke. He's
14 working. According to the neuropsychologist's report,
15 he's indicated that he is working. He stated he's
16 beginning a new start-up company and that the effect of
17 the stroke is narrowing his work from a hundred hours to
18 about 70 hours a week.

19 So no doctor has specifically said, no, we can't
20 go forward. That being said, I have not spoken to the
21 neuropsychologist. I am working with Barrows to get
22 permission to speak with her. Dr. Wolfson indicated he
23 can't give a formal opinion until he actually examines
24 Mr. Maerki again. I think he indicated yesterday that
25 he has -- Mr. Maerki has an appointment in a couple of

1 months.

2 MR. CLAPPER: Mid-December.

3 MS. COY: Mid-December.

4 So everything I'm looking at from the
5 neuropsychologist, which is what the neurologist has
6 indicated we should look to, he's working. He's working
7 on a new start-up company. If he can do that, he can
8 defend the lawsuit, from the Division's perspective. We
9 ask that the hearing be set and we move forward on this
10 case.

11 ALJ STERN: Okay. Mr. Houser, what's the
12 situation from -- as far as you know?

13 MR. HOUSER: As far as I know, Mr. Stern,
14 Mr. Maerki is set to be reevaluated in mid-December. I
15 believe it's Dr. Wolfson, however, I'm not positive as
16 to which doctor is set to reevaluate him at that time,
17 but Dr. Wolfson is still indicating that Mr. Maerki
18 should not be put under the stress of a trial or
19 extended hearing like this matter and we request that
20 the hearing be set for sometime after February.

21 MS. COY: Judge, just to let you know, we spoke
22 to Dr. Wolfson last night approximately at 4:00 o'clock,
23 and he said he can't give an opinion one way or the
24 other without seeing him in mid-December. So he, at no
25 time, indicated to us in our two conversations that

1 Mr. Maerki could not go forward or that he could go
2 forward. He basically said I can't do that until I see
3 him again.

4 ALJ STERN: Okay. And you're -- if I recall
5 correctly, at the last meeting we had you were talking
6 about calling about 13 witnesses or some number in that
7 area?

8 MS. COY: Yes. We've got -- we had it scheduled
9 with witnesses. We were going to use about a week and a
10 half, I think, and that's using four-day weeks.

11 ALJ STERN: How many witnesses?

12 MS. COY: I can tell you. Just a second. I
13 didn't bring my trial calendar with me.

14 ALJ STERN: Okay.

15 MS. COY: But it's approximately -- 11.

16 ALJ STERN: I think you told me 13 the last
17 time.

18 MS. COY: Yeah, it's approximately 13.

19 ALJ STERN: And, Mr. Houser, the respondents, I
20 think, mentioned six, possibly.

21 Is that about right?

22 MR. HOUSER: I believe that's correct, and I
23 know that the previous scheduling of time we were
24 agreeable to that amount of time so we can accommodate
25 everybody's witnesses.

1 ALJ STERN: Well, I can rest -- rest assured
2 this is the middle of November and the month of December
3 is pretty much a bad time to try and schedule a lot of
4 things specially because you don't find a lot of
5 witnesses who will want to cooperate with you. The
6 earliest I would foresee a hearing would probably be in
7 the beginning of next year. Now, the question is, is it
8 going to be before February, after February or somewhere
9 in between? I don't quite know.

10 I would suggest that the respondents, if they
11 wish to have some weight to their arguments to keep this
12 matter pending, submit something from a licensed
13 physician who will say in writing that the respondent
14 cannot appear for a lengthy legal proceeding at the
15 Commission; otherwise, we're sort of getting secondhand
16 information from the Division, although it appears that
17 he isn't in that much distress and he seems to be
18 working which would seem, well, if he can take the
19 stress of work he can take the stress of a hearing,
20 although that might be more difficult pending the
21 possible outcome.

22 So as I say, medical evidence in the form of a
23 written document would be the best; otherwise, I'm going
24 to look at dates. And I might have to schedule another
25 proceeding, but we will consider the length of this

1 proceeding and how long it's scheduled to last. I'll
2 have to look into that because undoubtedly it will
3 conflict with other scheduled matters and for a hearing
4 of that length, we would try and put it together rather
5 than break it up.

6 So at this time, I'm not going to schedule
7 another procedural conference. It will probably be a
8 little bit of time before I get ready to do a procedural
9 order on this, but I will sit down and prepare one
10 looking at my calendar and available dates for our
11 facility and I would say it would be at least ten days.
12 I'll probably wait for the transcript of this proceeding
13 to be filed, which is ten business days, and that gives
14 the respondents some time. If they want to secure
15 medical evidence that this matter not be scheduled
16 before -- I think you mentioned February -- after
17 February, we'll consider it that way. Otherwise, I may
18 consider it before February and, again, a lot of it
19 depends on what's scheduled in the coming year.

20 So anything else?

21 MS. COY: No, Your Honor. I do have copies of
22 the various reports, if you would like us to submit them
23 to you.

24 ALJ STERN: No. I don't want to read a lot of
25 medical information that just probably won't mean that

1 much without a conclusion or a recommendation with
2 respect to the respondent's health. That's why I say if
3 the Division has something substantial in writing that
4 says Mr. Maerki can appear and defend against the
5 allegations, fine. You can submit that, if that's from
6 one of his treating physicians. If it's from a
7 psychologist he's been seeing, I don't give that quite
8 as much weight only because of the fact that I want
9 medical in the form of what we consider here.

10 And that's it.

11 Mr. Houser, you can talk to your co-counsel and
12 warn her. And I can swear I don't know how we ended up
13 with that allowance for a telephonic hearing the last
14 time, but someone must have filed something or requested
15 it prior to us going forward and we were able to do that
16 telephonically, but this time I don't know who -- who
17 dropped the ball, but we're not going to wait around.

18 In any event, I think that pretty much addresses
19 the issue. And like I say, Mr. Houser, if your firm or
20 Ms. Mirch wants to secure something in writing that says
21 something about Mr. Maerki's condition and how soon
22 they'll be able to do it. It would appear to me that
23 Dr. -- what's his name? -- Wolfson, who is the treating
24 physician, says that he's not going to see the man until
25 December and may not give an opinion until then, in

1 which case we may put out -- we may be putting out an
2 order that Dr. Wolfson precludes us ultimately down the
3 line.

4 And I don't know -- Dr. Wolfson is what? A
5 neurologist?

6 MS. COY: Cardiologist.

7 ALJ STERN: Cardiologist. So he has -- the
8 respondent has heart problems also, I guess.

9 MS. COY: Yes.

10 ALJ STERN: Okay. Well, that's about all I can
11 do. It's going to be in the future. It's just not
12 going to be next month and it may fall in January. It
13 could fall in February and if the respondents are
14 seeking an additional delay, it will have to be
15 medically substantiated.

16 Anything else?

17 MS. COY: No.

18 ALJ STERN: No?

19 MR. HOUSER: No. Thank you.

20 ALJ STERN: Thank you.

21 That concludes today's proceeding.

22 (Whereupon, the proceedings concluded at 10:27
23 a.m.)

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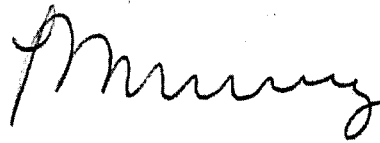
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1 STATE OF ARIZONA)
COUNTY OF MARICOPA)
2

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6

7 I CERTIFY that I am in no way related to any of
the parties hereto nor am I in any way interested in the
outcome hereof.
8

9 I CERTIFY that I have complied with the ethical
obligations set forth in ACJA 7-206(F)(3) and ACJA
7-206(J)(1)(g)(1) and (2). Dated at this 25th day of
10 November, 2014.

11 
12

13 LILIA MONARREZ
14 Certified Reporter
Certificate No. 50658.

15 I CERTIFY that Coash & Coash, Inc., has complied
16 with the ethical obligations set forth in ACJA 7-206
(J)(1)(g)(1) through (6).
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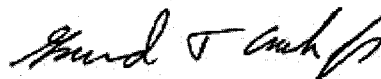
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